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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/008,870 | 11/02/2001 | H. George Brennan | 01BRE1 | 5039 |

7590 03/07/2005

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| EXAMINER |
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SNAY, JEFFREY R

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| ART UNIT | PAPER NUMBER |
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1743

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/008,870

Applicant(s)

BRENNAN, H. GEORGE

Examiner

Jeffrey R. Snay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Karow et al (WO 99/55404).

It is noted that the specific reference to columns and lines of Karow et al are made in reference to U.S. Patent 6,626,172 as an English language equivalent to the international patent document. But the international patent forms the basis for this rejection.

It is noted that specific reference to columns and lines of Karow et al are made in reference to U.S. Patent 6,626,172 as an english language equivalent to the international patent document. But the international patent forms the basis for this rejection.

Karow et al disclose a nasal dilator which includes an inner surface which is inherently capable of immobilizing airborne pathogens. The device is disclosed as being constructed for insertion into the nasal passage of an individual in order to both increase the flow of respiratory air by dilating the passage and to carry out diagnostic reactions or tests (column 2, lines 38-51). The device includes to mirror image, U-shaped sections which conform to the inner wall of each nasal cavity, and an orthogonal

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connecting section which crosses the septum when in position (see Figure 7). The U-shaped sections are disclosed in one embodiment as being slightly arched in an unstressed state (hence, U-shaped) (see column 4, lines 44-45). The inner surface (10) is in contact with the flow of respiratory air (column 4, lines 66-67) and has applied thereon cellulose based sponges for supporting a diagnostic agent (column 3, lines 7-22). Examples of such diagnostic agents include antigens with specific receptivity to particular antibodies, cytokine binding proteins and cell labels (paragraph bridging columns 5-6). Both the cellulose sponge matrix in and of itself, as well as the incorporated binding proteins and cell labels, would inherently have been fully capable of capturing and immobilizing airborne pathogens passing through the respiratory airway in the nasal cavity when so positioned.

3. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Brennan (U.S. 5,931,852).

Brennan discloses a nose airway device that is structurally identical with that which is presently claimed. See particularly Figures 1-4 of Brennan. Although the disclosure of Brennan fails to positively state that the inner surface of the device is capable of immobilizing airborne pathogens, such capability would have been inherent in the device as disclosed. Particularly, Brennan teaches the provision of dispensing pads on the inner surface, such dispensing pads being for the purpose of releasing a volatile medicament into the airstream (column 3, lines 50-57). Additionally, Brennan teach that the entire device can be formed from a porous material. Therefore, either by

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virtue of the presence of dispensing pads on the inner surface, or by virtue of such surface itself being porous, the inner surface of the nasal device disclosed by Brennan would have been inherently capable of absorbing and immobilizing airborne pathogens.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Huovinen et al disclose a diagnostic sample collection swab, for the purpose of sampling and immobilizing microbial pathogens, which comprises cellulose sponge material.

Response to Arguments

5. Applicant's arguments filed 02-28-2005 have been fully considered but they are not persuasive. Applicant argues that neither Karow et al nor Brennan disclose a coating on the airstream-contacting side of the device for immobilizing microorganisms. However, as stated in the grounds of rejection, each of the noted references teaches the provision of a porous material coating on the airstream-contacting side. Such porous material would have been inherently capable of immobilizing microorganisms entrained in a passing airstream by virtue of adsorption and physical capture. Furthermore, Karow et al teach the additional feature of binding proteins and cell labels, which again would inherently have been fully capable of capturing and immobilizing airborne pathogens. Applicant's arguments fail to address this issue of inherency in the prior art.

6. This is a Continued Examination of applicant's earlier Application No. 10/008870. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Ancillary Matters

7. Applicant is advised that any future presentations of the claims must omit text from cancelled claims.

8. Receipt is acknowledged of a terminal disclaimer filed 02-28-2005, apparently for the purpose of obviating an obvious double patenting rejection. No such double patenting rejection has been made. In any event, the terminal disclaimer would be


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ineffective for such purpose because Applicant has not provided the requisite fee, and further because the disclaimer fails to comply with 37 CFR 1.321(c).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Snay whose telephone number is (571) 272-1264. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey R. Snay
Primary Examiner
Art Unit 1743

jrs